

REMARKS

The Examiner's Office Action of August 18, 2003 is has withdrawn the final rejection under 35 U.S.C. §103(a) based upon Siebold (U.S. Patent No. 4,420,706), Hackett (U.S. Patent No. 4,042,845), Haertl (U.S. Patent No. 4,987,597) and Marren (U.S. Patent No. 5,222,050). Now, the Examiner has asserted a new ground of rejection under 35 U.S.C. §103(a) based upon Burnett (U.S. Patent No. 5,675,312), Leitten et al. (U.S. Patent No. 5,420,570) and Lee (U.S. Patent No. 5,707,757).

Specifically, the Examiner states that "Claims 1, 6-7, 9-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burnett. . . . in view of Leitten et al.[.]" (Office Action at 2). Further the Examiner states that "it would have been obvious to one of ordinary skill in the art at the time of the claimed invention that the intended use harsh environments for a noise maker such as taught by Burnett would have the possibility of being subjected to environmental factors such as moisture, rain or water that would have detrimental effect on the noise maker such that a known water-resistant, sound permeable barrier can be placed adjacent to the device front face such as taught by Leitten et al. To help prevent such water/moisture environmental fact related detrimental effect on the device so that the device would be operated in a reliable, [e]ffective and intended manner." (Office Action at 3). Respectfully, applicant submits that it would be improper to combine the references as asserted, and that even if it were proper to combine such references, such a combination would not result in the invention as presently claimed.

Leitten et al. is relied upon by the Examiner to support a structure to prevent watter or moisture from seeping into the device. Leitten et al. teaches the use of a Mylar or GORETEX material to cover the entirety of a watch face or housing. ('570 patent at col. 6, lines 26-40). In other words, Leitten et al. does not teach or suggest preventing water from entering a portion of a housing which contains a piezoelectric transducer, while leaving unaffected other sound amplifying cavities. If the teaching of Leitten et al. were applied to Burnett, the result would not be a cavity which would be water-proofed, but rather the entire housing would be so water-proofed, with the result that the device would have an undesirable damping in the decibel level of noise produced. By contrast, the present invention, with its claims amended to distinguish from Leitten et al., make clear that the hydrophobic material is intended not to cover the entire housing, but rather only those portions of

the housing communicating with the first cavity (i.e., the cavity immediately surrounding the piezoelectric transducer). The present invention is not directed toward, and indeed would not produce a desirable result if the entirety of the housing were covered with the hydrophobic barrier. Thus, Leitten et al., if combined with the Burnett reference, would not teach or suggest the claimed invention.

Claims 2-5, 8 and 12 were rejected under 35 U.S.C. §103(a) based upon the same combination of references cited above, and further in view of Lee. The same points raised above regarding Burnett and Leitten et al. are likewise applicable to this rejection. In addition, Lee is non analogous prior art, and there is no suggestion or teaching to combine it with the other references relied upon in rejecting claims 2-5, 8 and 12. Lee relates to a water-proof and gas pervious casing for a battery. ('757 patent, abstract). Lee teaches the use of a plurality of gas pervious sheets, at least one of which is water-proof in order to encapsulate a battery cavity within an electrical appliance. (Abstract; see also col. 4, lines 14-34). Nothing in Lee suggests using a water resistant fastener in combination with an water resistant, air permeable barrier. Likewise, nothing in Lee suggests using the battery encapsulation it teaches in a transducer housing assembly.

CONCLUSION

In light of the above, Applicant respectfully submits that Claims 1-13 are in condition for allowance. However, should an allowance not be forthcoming, Applicant requests that the undersigned attorney be contacted prior to the issuance of any further Office Action.

Respectfully submitted,



Arthur A. Gasey
Registration No. 35,150
NIRO, SCAVONE, HALLER & NIRO
181 West Madison Street
Suite 4600
Chicago, Illinois 60602
(312) 236-0733
Attorneys for Applicant

Date: January 16, 2004